

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
SCOTT RODGERS,)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL ACTION NO. 04-11842-PBS
CORRECTION OFFICER ORCUTT,)	
UNKNOWN CORRECTION OFFICER)	
JOHN DOE, JOE WHITMORE, DR.)	
HOWARD, JOHN SMITH and)	
PLYMOUTH COUNTY,)	
Defendants.)	

**DEFENDANTS JUDITH ORCUTT, JOSEPH WHITMORE AND
JOHN SMITH'S MOTION FOR SUMMARY JUDGMENT**

Defendants Judith Orcutt, Joseph Whitmore and John Smith hereby respectfully move the Court to enter summary judgment in their favor and against Plaintiff Scott Rodgers because there is no genuine issue of material fact to be tried as to these Defendants, and each is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56. As grounds for this motion, Orcutt, Whitmore and Smith state that there is no genuine issue of material fact to be tried concerning the Plaintiff's allegation that any one or all of these Defendants is liable under 42 U.S.C., § 1983 or under the Massachusetts Civil Rights Act, M.G.L. c. 12, § 11I. Furthermore, Orcutt, Whitmore and Smith state that they are entitled to qualified immunity on the Plaintiff's allegations against them.

The Complaint consists of four counts, only two of which allege liability against Orcutt, Whitmore and Smith, among others. Count II of the Complaint purports to allege

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“violation of 42 U.S.C., § 1983 by all individual defendants.” Count IV alleges “violation of the Massachusetts Civil Rights Act by all Defendants.” Counts I and III are addressed to other defendants.¹ Orcutt, Whitmore and Smith’s move for summary judgment on Counts II and IV to the extent that each count alleges liability against them.

The Plaintiff’s claims against Orcutt, Whitmore and Smith arise out of an incident which allegedly occurred at the Plymouth County Correctional Facility (“PCCF”) beginning at or around 11:00 p.m. on August 25, 2001 and continuing into the morning and afternoon of August 26, 2001. On and around the date of the alleged incident, the Plaintiff was an inmate in the custody of the Plymouth County Sheriff’s Department at PCCF. Orcutt was a corrections officer who worked the 11:00 p.m. to 7:00 a.m. shift in the Delta North 3 cell block at PCCF beginning on August 25, 2001. Whitmore was a nurse employed by the County of Plymouth at PCCF who was working on August 26, 2001. John Smith was a nurse employed by the County of Plymouth as a medical officer at PCCF. The Plaintiff alleges that Orcutt, Whitmore and Smith deprived him of a federal civil right by their alleged deliberate indifference to his serious medical need which he claims manifested itself during the final hours of August 25, 2001 and into August 26, 2001. Each of the moving defendants denies liability to the Plaintiff.

There is no evidence of deliberate indifference by Whitmore, Orcutt or Smith to any serious medical need of the Plaintiff which can support liability under federal or state civil

¹ Count I alleges liability in negligence under the Massachusetts Tort Claims Act, M.G.L. c. 258. Orcutt, Whitmore and Smith understand Count I to purport to state a claim against Plymouth County only because they are immune to liability under the Tort Claims Act. M.G.L. c. 258, § 2.

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rights laws. Moreover, the evidence demonstrates that Whitmore, Orcutt and Smith acted objectively reasonably under clearly established law. Finally, the Plaintiff's Massachusetts Civil Right Act claim must fail because the Plaintiff admits, as he must, that Whitmore, Orcutt and Smith did interfere with any civil right of the Plaintiff which can support liability under Massachusetts General Laws ch. 12, § 11I by means of "threats, intimidation or coercion."

Exhibits to this motion are appended. The Defendants memorandum of law in support of this motion and statement of undisputed facts are filed with this motion.

WHEREFORE, Defendants Whitmore, Orcutt and Smith respectfully move the Court to enter summary judgment in their favor and against the Plaintiff on all counts of the Complaint addressed to these defendants.

The Defendants,
CORRECTION OFFICER ORCUTT,
JOSEPH WHITMORE and JOHN SMITH,
By their attorney,

/s/ William P. Breen, Jr.

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Dated: August 18, 2006

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

The undersigned attorney certifies that prior to filing the above motion, he conferred in good faith with opposing counsel to narrow the issues raised by this motion.

/s/ William P. Breen, Jr.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on August 18, 2006.

/s/ William P. Breen, Jr.